

Water Adjudication Advisory Committee
Zoom Meeting
November 14, 2022

Committee members Abigail Brown, Mike Cusick, John Scully, Christy Clark, Jeff Laszlo, Ross Keogh, Jim Hagenbarth, Judith Coleman, Brian Bramblett, John Bloomquist, Ross Miller, and Judge Holly Brown attended. Jeremiah Langston, Lorents Grosfield, and Jim DuBois did not attend.

The following people from the Water Court attended: Chief Water Judge Russ McElyea; Associate Water Judge Stephen Brown; Water Court Administrator Sara Calkins; Senior Water Master Anna Stradley; Senior Water Master Julia Nordlund; and Judicial Assistant Swithin Shearer, who took minutes.

Minutes

10:01 Meeting begins.

10:02 Judge McElyea provided an overview of the Advisory Committee's activities over the last two years, including bills drafted by Mike Cusick, Abigail Brown, and John Bloomquist.

Senator Sales plans to sponsor a recently drafted bill. The parties involved in the drafting process will discuss the stakeholder draft bill in further detail.

10:05 Abigail Brown discussed the process of drafting the stakeholder bill, including clarifying the Water Court's jurisdiction. The Water Court is defined as the four divisions plus the Chief and Associate Judges. Pages 11 through 13 of the draft bill lay out the powers and duties of the Court. There are portions addressing motions to amend, enforcement actions, ditch easement issues, and other issues that would help water users have one venue to solve water-related issues. Judges would be appointed through the Governor's office and retained through a retention election. Water distribution issues could be returned to the local district court if requested.

John Bloomquist added that Section 6 of the bill was based on the draft the Advisory Committee was working on last fall. This bill allows the Water Court to exist after the adjudication ends. The selection of judges would change as already discussed. Our committee needs to scrutinize this bill.

John Scully: We should show appreciation to the people who worked on this bill. The risk is that the bill includes many topics, which could open it to scrutiny from many people. However, it seems to address many or all of the issues discussed in the stakeholder meetings.

Judge McElyea: I echo Mr. Scully's comments. The time commitment at the expense of their private practices was significant. I have stated to the Governor's office that the Court will support this bill, although some information is included in the bill that may not need to be there. It is the most significant piece of water legislation to be advanced in the last 30 years in the state. The bill is anticipated to be moved through as quickly as possible at the beginning of the session. Many negative critiques of the draft are based on misinformation.

John Scully: The "cheat sheet" provided by Abigail Brown was very helpful and I believe it would be helpful to distribute to the committee.

Judge McElyea: Yes, we will distribute that to everyone, but it may not be accurate regarding the adjudication deadlines.

Christy Clark: Is this a consolidated document that is the same provided by the Lieutenant Governor?

Abigail Brown: It should be consolidated and should be the same as that provided by the Governor's office.

Jeff Laszlo: How does this avoid politicizing the Court?

John Bloomquist: The addition of the election process and the appointment of judges by the Governor's office was an attempt to address some of the issues in the current political environment.

10:31 Judge McElyea changed topics to discuss final decree issuance. The Court intends to issue 40R and 40Q Final Decrees in December. How is this process going? What did we miss and what do we need to improve?

John Bloomquist stated the tabulation was difficult because it was numerical. An owner and a source index are much more helpful.

Judge McElyea stated that we will provide a source index organized by priority date.

Jeff Laszlo wondered if the information could be sorted.

Judge McElyea stated we are working with the DNRC to enable the public to sort and manipulate the data, but we are not close to that objective yet. Money and time are limiting factors for the DNRC.

Ross Keogh wondered whether we could identify the contested nature of the water rights.

Judge McElyea: Would inclusion of that information in the Findings of Fact be helpful?

Ross Keogh: Yes. Also highlight which cases or how many of them went to the Supreme Court.

Judge McElyea: Identifying all cases or water rights that were appealed to the Supreme Court may not be possible.

Abigail Brown: Include the division in which that basin resides in the caption of the Findings.

Judge McElyea: Yes, we will include that.

John Bloomquist: How can we ensure accuracy of the abstracts attached to the final decrees?

Judge McElyea briefly described the errors that occurred in issuance of the 40H Final Decree. We met with the DNRC in December 2021 to understand the root of those errors. The DNRC doesn't have the ability to track changes to water rights after issuance of a Court order, so I don't have 100% confidence that the next two decrees will be entirely accurate, but I hope the process will be accurate once the new database is fully functioning. Unfortunately, I don't believe I can correct this problem with issuance of an order.

John Bloomquist: It seems the responsibility falls on the owners of the water rights to confirm the accuracy of the information. Will the product ever be the Water Court's alone?

Judge McElyea: We don't have the ability to track ownership changes. We don't have a database management system. The statutes charge the DNRC with the record-keeping responsibility.

Judge Stephen Brown: We intend for our final decrees to be the starting point for any future issues.

Judge McElyea: I asked the DNRC for a list of all water rights in 40R and 40Q that had been changed by DNRC personnel during a specific time period, and I was told they couldn't provide that information.

John Bloomquist: This is a big problem that needs to be fixed. Maybe this committee could work to fix this issue.

11:00 Judge McElyea stated many committee member terms expire at the end of this year. The Court will solicit interest again. The Court is grateful for the hard work of all the current members. You are an independent committee, so you are free to determine topics and meetings moving forward.

11:06 Meeting closed.